

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT LEDESMA III,

Defendant and Appellant.

F056638

(Super. Ct. No. BF123321A)

**ORDER MODIFYING OPINION AND  
DENYING REHARING,  
NOT FOR PUBLICATION**

**[CHANGE IN JUDGMENT]**

BY THE COURT:

It is ordered that the nonpublished opinion in the above entitled matter filed December 31, 2009, is modified as follows:

1. On page 2, the following sentence “We will find merit to this contention and remand the matter for further proceedings” in the second full paragraph is deleted. The following sentences are added to the second full paragraph after the sentence ending in “... when it denied his *Pitchess* motion” :

“Additionally, in a petition for rehearing filed on January 29, 2010, appellant contends that he is entitled to additional presentence credit pursuant to Penal Code section 4019 as amended effective January 25, 2010. We will find merit to Ledesma’s first contention and find that the record is inadequate to resolve his second contention. We will also remand the matter for further proceedings.”

2. On page 7, the following section is inserted after the first paragraph prior to the heading “DISPOSITION”:

***“Conduct Credit Pursuant to Penal Code Section 4019 as Amended Effective January 25, 2010***

“Penal Code section 4019 was amended effective January 25, 2010, to allow certain defendants held in presentence custody to be awarded one for one credit. (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50, eff. Jan. 25, 2010.) On January 29, 2010, appellant filed a petition for rehearing requesting modification of his presentence custody credit to the more generous presentence custody credits allowed by Penal Code section 4019, as recently amended. (Pen. Code, § 4019, subd. (f)). The record, however, is inadequate for this court to determine whether appellant is a person who is excluded pursuant to Penal Code section 4019, subdivisions (b)(2) and (c)(2) from receiving one for one presentence custody credit. Therefore, we will remand this matter to the trial court so that it may make this determination and, if necessary, amend appellant’s award of presentence custody credit.”

3. On page 7, the following paragraph is inserted immediately following the first full paragraph after the heading entitled “DISPOSITION”:

“Should the original judgment be reinstated, the court shall also determine if Ledesma is entitled, pursuant to Penal Code section 4019 as recently amended, to one for one credit for his presentence custody in this matter. If the court determines that Ledesma is entitled to additional presentence custody credit, it is directed to file an amended abstract of judgment that contains his correct award of presentence custody credit and to forward a certified copy to the Department of Corrections and Rehabilitation.

This modification changes the judgment.

Appellant’s petition for rehearing in the above entitled matter is denied. Appellant’s request to file a late petition for rehearing is denied as moot.

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Vartabedian, Acting P.J.

WE CONCUR:

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Levy, J.

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Gomes, J.